

THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl No. : 10/643,814
Applicant : Ryan E. Johnson
Filed : 08/19/2003
TC/A.U. : 3644
Examiner : Kimberly S. Smith
Docket No. : 28459.00
Customer No. : 22465

Confirmation No. 4680

Assignee : Radio Systems Corporation
Title : Attachment for Releasable Pet Door Flap
Express Mail : EV483827535US

Commissioner for Patents
P. O. Box 1450
Alexandria VA 22313-1450

DECLARATION OF THOMAS P. BJORHOLM UNDER 37 C.F.R. § 1.132

1. I, Thomas P. Bjorholm, declare as follows, under penalty of perjury.
2. I received an Associate in Applied Science degree in Mechanical Technology from NW Iowa Technical College in Sheldon, IA during August, 1978 and a Bachelor of Science in Technical Management from Regis College in Denver, CO during August, 1984.
3. I have a variety of experience in the field of mechanical engineering and design including three (3) years as a mechanical drafter in the fields of athletic equipment and auto-focus devices for cameras, three (3) years as a mechanical designer in computer recorder and printing devices, three (3) years as a mechanical engineer in corporate identity signage, sixteen (16) years as a mechanical engineer in consumer electronics, and, most recently, one (1) year as mechanical engineer in pet products, specifically the design and improvement of pet doors.

4. As part of my current employment, I am familiar with numerous types and features of pet doors and have become familiar with the state of the art in pet doors as existed at the filing date of United States Patent Application Number 10/643,814 ("the '814 application").

5. I have reviewed '814 application, the Office Action of February 25, 2004 ("the First Office Action"), the response to the First Office Action ("the Response") and the Office Action of July 21, 2004 ("the Final Office Action") pertaining to the '814 application. I also have reviewed United States Patent Number 4,989,546, entitled "Pet Refuge," issued to Ted Cannaday on February 5, 1991 ("the '546 patent") and United States Patent Number 5,216,850, entitled "Portable Garage Apparatus," issued to Thomas S. Kemper, et al., on June 8, 1993 ("the '850 patent").

6. The Final Office Action maintains the rejection under 35 U.S.C. § 103(a) in which the examiner states:

Cannaday discloses a pet door comprising a frame/means for framing (52) defining passageway, a solid flap/means for obstructing/first flap/flap(54) having a first and second face, an open flap means/means for sealing/second flap/stripe (56) wherein the open flap is moved by the solid flap in one direction and restricted when a force is applied in the opposing direction (column 4, lines 3-15). However, Cannaday does not disclose the use of snap fasteners for fastening the open flap. Kemper teaches within the analogous art [sic] of housing structures the use of attaching a flap (28) via snaps/means for releasing to a housing structure for easily attaching and detaching a flap from the housing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use snaps as taught by Kemper to attach the flap mechanism as disclosed by Cannaday in order to provide for quick attachment and detachment of the flap thereby allowing for ease in assembly and subsequent cleaning of the flap.

7. Cannaday discloses a pet shelter adapted to be secured in a window to provide a pet with access to the outside atmosphere in a confined setting. The pet shelter incorporates a pet door, which serves to provide the pet access to the pet shelter while restricting the entry of the elements into the home. A full review of Cannaday shows no discussion of making any portion of the pet door flap removable and suggests no problems requiring the need for a removable pet door flap.

8. Kemper discloses a portable garage apparatus that attaches to an existing carport structure. The apparatus disclosed by Kemper includes a series of post-mounts (see Figs. 4 & 5) designed to be tied to the posts of an existing carport. The post-mounts include a plurality of snaps to mate with corresponding snaps on a series of wall panels. This apparatus allows a normally-open carport to be converted into an enclosed carport.

9. For ease of discussion, lines 10-33 from Column 4 of Kemper are reproduced here:

FIG. 6 illustrates the entrance panel 21, including reinforcing grommet openings 30 formed coextensively along an upper edge of the entrance panel 21 for receiving fasteners therethrough for mounting the entrance panel to the carport roof for an underlying framework. The further snap fasteners 19a formed coextensively along each vertical edge of the entrance panel 21 to permit securement of the entrance panel to associated snap fasteners 19 of post mounts 16 mounted to the first and second forward post 12 and 14. It is noted that the snap fasteners 19a are also spaced apart the predetermined spacing as the snap fasteners 19.

FIGS. 7 and 8 illustrate the use of a modified entrance door panel 32, wherein pneumatic tubes 33 are directed laterally at equal spacings along the entrance door panel 32. The pneumatic tubes 33 include bristle brush coverings 34 formed coextensively of each exterior surface of each tube 33, whereupon a vehicle directed through the entrance door panel 32 when the panels further snap fasteners 19a are released relative to each respective post mount 16 permits the door to remove excess debris relative to the vehicle directed therethrough when the vehicle is directed along the flexible web during its traverse into the carport.

10. The discussion of Figure 6 in Kemper discloses that the top edge of the entrance panel (21) is secured to the carport roof using fasteners inserted through the reinforced grommets (30). Snap fasteners (19a) are provided along the side edges of the entrance panel (21) to allow the entrance panel (21) to be locked (preventing movement of the entry flap and not as a security measure) by attaching the side flap to the post mounts (16) shown in Figure 5.

11. Kemper has specifically selected two distinct types of connectors for distinct purposes. Grommets are used along the top edge and snap fasteners are used

along the side edge. These selections indicate that Kemper wanted the sides of the entrance flap to be easily releasable but desired the top of the entrance flap to remain affixed to the carport to create a door flap. Further, the change from snaps to grommets along the top edge suggests that snaps are unsuitable for the purpose of securing the top edge of entrance flap to the carport against the forces exerted on the entrance flap by a vehicle entering and exiting the carport.

12. The discussion of Figures 7 and 8 in Kemper offers guidance as to the intended usage of the portable garage apparatus. Modified versions of the entrance flap (21) include pneumatic tubes (33) with bristle brush coverings (34) designed to sweep debris off of a vehicle entering the carport. Clearly, the vehicle makes contact with the entrance flap (21) for this function to work and the Kemper entrance flap is designed remain secured to the roof of the carport during normal usage.

13. Kemper discloses that the snaps must be previously unfastened prior to the passage of the vehicle through the entrance of carport. This is necessary due to the flexible construction of the post mounts (16) and the entrance flap (21). Snap fasteners release in response to an unsnapping force, i.e., one that is substantially normal to the surface of the snap fastener (strain). However, because of the flexibility of the materials disclosed in Kemper, it is necessary to apply the unsnapping force directly at the snap fastener (19a), e.g., by a human hand. If the force is applied to the entrance panel (21) itself, such as by the vehicle pushing against the entrance panel, the flexible material will give and the resulting force on the snap fastener (19a) will be a shearing force (sideways relative to the snap) to which snap fasteners have great resistance.

14. The disclosure by Kemper makes apparent that the entrance flap is not "removable" and that, even where snaps are used, the snaps are not arranged to allow the entrance flap to "break-away" from the frame under normal use conditions. Obviously, the entrance flap must be installed and can be removed, but there remains a significant distinction between assembly/disassembly and usage.

15. Based upon my review, neither Cannaday nor Kemper disclose a removable flap designed to break-away during use. More specifically, Cannaday does

not disclose any form of a removable flap and Kemper does not disclose a flap that is removable during usage conditions by the separation of the snap fasteners.

16. Considering the problems solved by Cannaday and by Kemper, the most sensible combination of Kemper with Cannaday leads to the development of a pet door flap that is semi-permanently or permanently affixed to the frame along the top edge and provided with snaps along the side edges to control ingress/egress or to affect the weather seal of the pet door when not in use.

17. Considering the dual flap pet door used by Kennedy, only the outer flap could be secured to the frame, effectively making the outer flap member a fixed part of the frame and not a moving part of the flap, unless specifically release by the pet owner. Such an implementation adds nothing to the improved weather seal of the dual flap pet door or, when snapped, destroys the utility of the outer flap.

18. Cannaday does not disclose a reason for using a removable flap. Cannaday's window box pet enclosure is a self-contained and portable unit. The pet door is not intended to be removed from the pet enclosure and moved to other locations. Rather, the entire unit is intended to be quickly installed in a window opening of what is typically going to be a climate controlled dwelling.

19. Similarly, Kemper does not offer a reason for using a removable flap other than portability. Kemper discloses a device for enclosing an existing, open carport. To create an entrance, Kemper discloses a single entrance flap that appears intended to enclose the carport against the elements while still providing ingress and egress from the carport. This function is analogous to the function provided by the pet door flap of Cannaday. Further, an open carport is not climate controlled and the need for the same level sealing the entrance flap against the elements is different from that required by the typical use of a pet door.

20. In general, pet door flaps are intended to remain fixedly secured to close the pet door opening against the elements. The use of snap fasteners, without reason, increases the risk that the pet door flap will fail to seal the pet door by virtue of it becoming unattached.

21. With respect to motivation, Kemper adds no more to the common knowledge of the use of snaps than the basic knowledge of the existence and function of snaps provides to one skilled in the art. In my experience as an expert in the field of pet doors, a knowledge of snap fasteners does not suggest any special reason for usage in a pet door over other known fasteners unless a specific problem is identified.

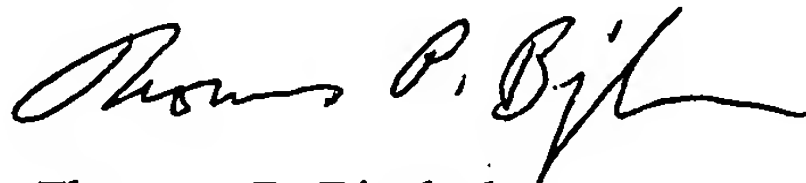
22. The examiner suggests one skilled in the art would be motivated to take the snap fasteners from the sides of the Kemper entrance flap and apply them to the top edge of only the outer lap of the Cannaday pet door to allow the pet door flap to be removed for cleaning. If the need for removing the pet door flap is for cleaning, as suggested by the examiner, then one skilled in the art would make both flaps removable. Conversely, if cleaning is not the motivation, there is no suggestion to me, an expert in the field of pet doors, to make either flap removable as neither Cannaday or Kemper suggests an advantage in doing so.

23. There is no suggestion or motivation for one of ordinary skill in the art to make the examiner's asserted combination. Cannaday does not suggest a need for a removable pet door flap to one skilled in the art. Likewise, Kemper offers no valid reason why one skilled in the art of pet doors would seek to make the pet door flap removable from the pet door frame.

24. The combination of Kemper and Cannaday does not teach or suggest all of the claimed limitations arranged as claimed. Although Kemper does teach the use of snap fasteners, the snaps are arranged on the sides of a single entrance flap. Given the stated goal of portability (and ignoring the use of grommets at the top of the entrance flap), to rearrange the snaps of Kemper and place them only at the top edge of the outer flap of Cannaday is not taught or suggested.

25. For the reasons provided in Paragraphs 5 through 24, it is my opinion that there is no suggestion or motivation to combine Kemper and Cannaday and that the combination of Cannaday and Kemper does not teach or suggest all of the limitations arranged as claimed. Accordingly, there is no apparent reason as to why one skilled in the art as of the filing date of the '814 application would attempt the examiner's asserted combination.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Thomas P. Bjorholm".

Thomas P. Bjorholm